

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Communications Assistance for Law	)	ET Docket No. 04-295
Enforcement Act and Broadband Access and	)	
Services	)	RM-10865

**REPLY COMMENTS OF  
FAIRLEIGH DICKINSON UNIVERSITY**

**Introduction and Summary**

Fairleigh Dickinson University respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.<sup>1</sup> Fairleigh Dickinson University supports the comments filed by the Higher Education Coalition and submits this reply to amplify several points based on its own experience and circumstances.

(1) the FCC should make clear that the private networks operated by colleges, universities, and research institutions are exempt from CALEA; (2) Fairleigh Dickinson University has never been specifically asked by law enforcement to provide network surveillance capabilities. The resources associated with delivering the capability as defined in CALEA is significant and history indicates not warranted. However, Fairleigh Dickinson University will continue its

---

<sup>1</sup> *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) (“*Order*”).

practice to cooperate with law enforcement officials to the best of its capabilities; and (3) applying CALEA to Fairleigh Dickinson University's broadband network would impose significant costs that would impede Fairleigh Dickinson University's ability to deliver on its core responsibilities to students and society as a whole.

### **Discussion**

#### **1. The FCC Should Clarify That Higher Education Networks Are Exempt from CALEA.**

Broadband networks operated by higher education and research institutions are not subject to CALEA because the statute expressly exempts "equipment, facilities, or services that support the transport or switching of communications for private networks." 47 U.S.C. § 1002(b)(2)(B). Although the Commission acknowledged in the *Order* that private educational networks are exempt from CALEA, it introduced ambiguity by stating: "To the extent . . . that [such] private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA . . . ." *Order* at ¶ 36, n.100. Fairleigh Dickinson University has leased ATM and TLS connections from Verizon. It is through Verizon that Fairleigh Dickinson University connects to the public Internet and ensuing concern that the Institution could be deemed under the *Order* to "support" such a "connection" and thus become subject to CALEA.

The Commission should clarify that only commercial entities are covered by the language in footnote 100, in light of the clear statutory exemption of private network operators. Alternatively, the Commission should invoke its discretionary

authority under Section 102(8)(C)(ii) of CALEA to exempt higher education and research institutions from compliance with the forthcoming assistance-capability requirements. Such an exemption is necessary to remain faithful to congressional intent and to avoid imposing unnecessary burdens on colleges, universities, and research institutions.

Contrary to the suggestion by the Department of Justice that “no exemptions are appropriate based on the current record,” DOJ Comments at 11, the Higher Education Coalition has defined a narrow class of private network operators that should be exempt from CALEA for all the reasons contained in the Coalition’s comments and in these reply comments. The absence of existing compliance standards does not argue for postponing exemption determinations, but instead makes a prompt exemption more critical. Because the Commission has established an 18-month compliance deadline, Fairleigh Dickinson University must begin planning *now* to set aside funds for possible CALEA compliance. Far from being premature, an exemption for higher education and research institutions is urgently necessary.

**2. The resources associated with delivering the capability as defined in CALEA is significant and history indicates not warranted.**

Based on precursory estimates, delivering the capabilities as outline in CALEA would impose a one time financial burden to the University of over two million dollars, and annual operating costs which could easily exceed one hundred thousand dollars. Even for a large organization, these costs are not insignificant and obtaining the funds necessary to support CALEA is a significant burden. To

date, no network surveillance requests have ever been made to Fairleigh Dickinson University, nor has Fairleigh Dickinson been approached by law enforcement and advised of suspicious activity. Hence, one can argue that the costs associated with CALEA compliance is unnecessary and will cause negative financial impacts to the university.

Fairleigh Dickinson University will maintain its practice of full cooperation with law enforcement and compliance with regulatory mandates.

**3. A Broad Application of CALEA Would Impose Significant Burdens on Fairleigh Dickinson University and Divert Funds from Its Critical Educational Mission.**

As noted above, Fairleigh Dickinson University believes that CALEA does not apply to it under the plain terms of the statute and under the most reasonable reading of the *Order*. Additionally, as noted above, CALEA compliance would create an undue financial hardship on the university. If the Commission were to apply the language in footnote 100 of the *Order* broadly and conclude that higher education networks such as Fairleigh Dickinson University's must comply with some or all assistance capability requirements, such a ruling would impose significant and unwarranted burdens.

If the *Order* were interpreted by DOJ or the FCC to require interception of communications by particular users at points *within* the Institution's network, the university would need re-architect and re-engineer its entire network, and to replace all of its network electronics to be compliant with CALEA. Additionally, the

university would have to hire additional staff to maintain and manage the additional equipment and processes which is not economically viable.

In short, if the FCC were to apply CALEA broadly to higher education networks — contrary to the text of the statute — such a ruling would impose significant burdens that far outweigh its putative benefits. The Commission accordingly should exempt higher education institutions and research networks from CALEA, if it considers them subject to the assistance-capability requirements in the first place.

Moreover, if the FCC applies CALEA to private educational networks at all, it should construe the *Order* as applying *at most* to the Internet connection facilities at the edge of the network, for the reasons stated by the Higher Education Coalition. In addition, as proposed by the Coalition, any such requirement should be phased in over a five-year period as existing equipment is replaced in the normal course of events.

### **Conclusion**

Fairleigh Dickinson University respectfully requests that the Commission clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA.

Respectfully submitted,

---

Neal M. Sturm  
Associate Vice-President and Chief Information Officer

Fairleigh Dickinson University  
285 Madison Avenue  
Madison, New Jersey 07940

December 12, 2005